IN THE HIGH COURT OF BOMBAY AT GOA
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WRIT PETITION NO. 430 OF 2002 WITH MISCELLANEOUS CIVIL APPLICATION NO. 73 OF 2003 AND WRIT PETITION NO. 431 OF 2002 WITH MISCELLANEOUS CIVIL APPLICATION NO.74 OF 2003

WRIT PETITION NO. 430 OF 2002 WITH MISCELLANEOUS CIVIL APPLICATION NO. 73 OF 2003

Shri Socorro Fernandes,
s/o late Andre Menino Fernandes,
major in age, married, advocate
and r/o House No.75-A, Malbhat,
Margao, Salcete, Goa. ... Petitioner

Versus

1. The Margao Municipal Council,
through its Chief Officer,
with is office at Municipal
Building, Margao, Salcete,
Goa, and

2. Smt. Rosa Quiteria Fernandes,
widow, major in age, housewife,
and r/o H. No.73, Malbhat,
Margao, Salcete, Goa.

2(a) Mrs. Piedade Moraes,
r/o H. No.73, Malbhat,
Margao, Salcete, Goa, and

2(b) Mrs. Esperanca D'Cunha,
r/o H. No.162, Motosai,
Goa Velha. ... Respondents.

Shri Sudin Usgaokar, advocate for the petitioner.

Shri S. D. Padiyar, advocate for respondent no.1.

Shri S. B. Kakodkar, advocate for respondent nos.2(a) and 2(b).

WRIT PETITION NO. 431 OF 2002 WITH MISCELLANEOUS CIVIL APPLICATION NO. 74 OF 2003

Shri Socorro Fernandes,
s/o late Andre Menino Fernandes,
major in age, married, advocate,
r/o House No. 75-A, Malbhat,
Margao, Salcete, Goa. ...Petitioner.

Versus

1. The Margao Municpal Council,

through its Chief Officer,
with its office at Municipal Bldg.,
Margao, Salcete, Goa,

2. Shri Premanand N. Borkar,
(deceased) s/o Nagu Borkar,
major in age, painter,
married, and his wife,:-

2(a) Smt. Sumoti Premanand Borkar,
w/o late Mr. Premanand R.
Borkar,

2(b) Shri Nagesh Premanand Borkar,
s/o late Mr. Premanand
Borkar,

2(c) Smt. Neha Nagesh Borkar,
w/o Mr.Nagesh Borkar,

2(d) Ms. Nutan Premanand Borkar,
d/o late Mr. Premanand Borkar,

2(e) Ms. Shakila Premanand Borkar,
d/o late Mr. Premanand
Borkar,

2(f) Ms. Madhuri Premanand Borkar,
d/o late Mr. Premanand Borkar,
all r/o H. No. 74,
Malbhat, Magao, Goa.

3. Smt. Sumoti P. Borkar,
major in age, housewife,
r/o H. NO. 74, Malbhat,
Margao, Salcete, Goa.

Shri Sudin Usgaokar, advocate for the petitioner.

Shri S. D. Padiyar, advocate for respondent no.1.

CORAM : F. I. REBELLO &
P. V. HARDAS, JJ.

DATE : 28th July, 2003.

ORAL JUGMENT (Per Rebello, J.)

Rule in both the petitions. The respondents waive service. By consent, heard forthwith.

2. The petitioner has moved this Court against the

Orders dated 3rd January, 2002 in the respective petitions, whereby the Chief Officer of the Margao Municipal Council declined to entertain the complaint by holding that the complainant, i.e. the petitioner in the petitions should first establish that the person against whom the complaint is made is a tenant and not a mundkar supported with documentary evidence. In view of that the Chief Officer declined to entertain the complaint. It is not necessary to advert to the various facts for the view to be taken.

3. Learned counsel for the petitioner contends that where a person is a mundkar or a tenant, within the Municipal area, no construction can be put up or added to the existing construction, without due licence from the Municipal Authorities. The status of such a person is immaterial.

On the other hand, on behalf of the respondent no.1 their learned counsel contends that the petitioner has an alternate, adequate and efficacious legal remedy and in view of that this Court should not entertain the present petitions. It is further submitted that considering Section 184-E of the Municipalities Act, 1968, no Court has jurisdiction. Reliance is also placed on a judgment passed by a learned Single Judge of this Court in the case of **Subha Venkatesh Kamat vs. Vasu Naik & Ors,** (Civil Revision Application No.210 of 1999) decided on 18th July, 2003.

4. The issue whether a person would include the complainant within the meaning of Section 184 of the Municipalities Act need not be decided in view of the view to be taken and the facts involved. Suffice it to say that if the order is without jurisdiction and is a nullity, the mere existence of an adequate and efficacious legal remedy by itself is not an answer.

In the instant case, respondent no.1 has failed to exercise jurisdiction vested on the assumption that the status of a party is important. That, considering the provisions of the Act, is totally immaterial. No person, whether he be the owner, tenant, mundkar or occupying the premises otherwise, can carry out a construction, which requires a licence of respondent no.1 and without obtaining such a licence. This is the only test the Chief Officer has to apply while addressing himself to the complaint. In that view of the matter, we of the view that even assuming there is an alternate remedy, considering that the action of the Chief Officer is without jurisdiction, these petitions can be entertained.

Insofar as Section 148-E of the Municipalities Act is concerned, that is no answer to the bar of the extraordinary jurisdiction of this Court. The bar of Section 148 at the highest would be to a civil Court or a Tribunal exercising jurisdiction. That contention also must be

rejected.

5. The last contention is based on the judgment of the learned Single Judge of this Court in **Subha Venkatesh Kamat vs. Vasu Naik** (supra). As can be seen from the facts of that case it was an inter se dispute between the parties, wherein public authority was not a party. The ratio of that judgment, therefore, cannot be applied to the issue which is before this Court. The objection as raised on behalf of the respondent no.1 will have to be rejected.

6. Considering the provisions of the Municipalities Act, the impugned Order of 3rd January, 2002, for the reasons as aforestated is set aside. The matter is remanded to the Chief Officer of respondent no.1 to consider the complaint as filed by the petitioner and after giving notices to the respondent, pass appropriate orders according to law at any rate within three months from today.

Rule made absolute accordingly in both the petitions.

F. I. REBELLO, J.

P. V. HARDAS, J.

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